SINGLE BENCH

(1) 3

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P. NO. 1344 **/2005**

PETITIONER : Maheshwar Kumar Singh, Aged about 68 yrs, S/o. Late Ramanuj Sharan Singh Dev, R/o. Surguja Palace, Ambikapur, Distt. Surguja (C.G.), Present R/o. Kathmandu, Nepal, Through: His Power of Attorney Holder, T.S. Singh Dev. S/o. Late Maharaja, M.S. Singh Dev R/o. Kothighar, Ambikapur, Surguja (C.G.)

Proposed Applicant

VERSUS

RESPONDENTS :
PLAINTIFFS

1] Ramjanam Prasad Jaiswal, Age 56 yrs S/o. Shri Devnarayan Prasad Jaiswal,

2] Smt. Kanti Devi, W/o. Ramjanam Jaiswal, Aged about 45 years,

3] Mukhchand Prasad S/o. Shri Ramjanam Jaiswal, Aged about 26 years,

All above R/o. Babupara Nagar, Ambikapur, P.S. & Tahsil Ambikapur, Distt. Surguja (C.G.)

4] Ravindranath Dubey S/o. Late Prabhunath Dubey, Aged about 50 years, R/o. Bramhapara, Ambikapur, District Surguja (C.G.)

5] Smt. Mansa Shukla W/o. Shivram Shukla, Aged about 42 years, R/o. Mayapur, Ambikapur, Distt. Surguja (C.G.)

6] Vijaynath Dubey S/o. Shri Shivdhari Dubey, Aged about 65 years,

7] Tirathnath Dubey, S/o. Shivdhari Dubey, Aged about 63 years,

8] Ramharsh Dubey S/o. Shivdhari Dubey, Aged about 61 years,

9] Ramanuj Dubey S/o. Shivdhari Dubey, Aged about 57 years,

(Respondents/defendants)

10] State of Chhattisgarh, Through: Collector, Surguja (C.G.)

P.R. No. 1357/05 Presented by Shri Manjunath dated 30-03-05

शपथ आयुक्त

RECEIVED-COPY 30/3/05 CLERK to A.G. BILASPUR

(2) 4

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 1344/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	7/4/2005	

Shri Manoj Paranjpe for the petitioner.

Shri Pankaj Shrivastava, P.L., for the State/respondent no.10.

Application for urgent hearing is allowed.

Heard.

Petitioner Maheshwar Kumar Singh has filed this writ petition against the order passed by the trial court in C.S. No.1-A/2003, whereby his application under Order 1 Rule 10 CPC for joining him as a party defendant has been rejected.

Counsel for the petitioner submits that respondents no.1 to 3 are the plaintiffs. They filed the suit for permanent injunction against respondents no.4 to 9 and joined the State/respondent no.10 also as a party. The suit was filed on 19/8/1994, copy of plaint is Annexure-P/1, which is pending since more than 10 years. Respondents no.4 to 9 filed the written statement (Annexure-P/2) denying the claim and they further filed a counter claim against the plaintiffs, which is not marked but is filed at page 17 of the writ petition.

On perusal of record, it appears that the application under Order 1 Rule 10 CPC dated 24/11/2004 was filed by the petitioner as late as on 17/2/2005, when the case was fixed for evidence. The said application was objected to by the defendants/respondents no.4 to 9 vehemently. The Court below after hearing the parties considered the matter in great detail. It has been noted by the court below that the defendants/respondents no.4 to 9 have filed the counter claim for possession. It has further been noted by the court below that under the special facts and circumstances where the counter claim is there against the plaintiffs, the joining of petitioner

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक WP 1344/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Maheshwar Kumar Singh as co-defendant at the stage of evidence is not proper. It has also been noted by the court below that on petitioner's own showing that he has sold the property to various persons in pieces, he has not applied those persons to be joined as the defendants. Those persons also have not come up. Even otherwise, the case put up by the petitioner is on the assumption that there may be some surplus land and this surplus land may fall in his share. It is hypothetic.

The court below has considered all the aspects. This Court has also gone through the material placed before it and is of the opinion that under the facts and circumstances as they exist in the case where counter claim is also filed by the defendants against the plaintiffs and the case of the petitioner being hypothetical and purchasers from him are not there on record and not applied to join as party and the petitioner wants to intermeddle in somebody else matter and the object is only to protract the proceedings, the petitioner is not a necessary party for adjudication. The court below has rightly observed that if the petitioner desires he may file a separate suit praying for the reliefs, which he wishes to claim. Even otherwise, so far as the jurisdiction of this Court under Article 227 of the Constitution of India is concerned, that has been amply explained by this Court in its decision in the case of ***Surya Devi Rai vs. Ramchander Rai and others*** reported in ***2003 AIR SCW 3872*** and applying those tests not a case for interference under Article 227 of the Constitution of India.

The petition deserves to be and is accordingly dismissed.

Sd/-
Fakhruddin
Judge